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Hearing Date/Time: TBA

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

TRONOX INCORPORATED, *et al.*,

Debtors.

**Bankr. Case No. 09-10156 (ALG)
(Jointly Administered)**

TRONOX INCORPORATED, *et al.*,

Plaintiffs,

**Adversary Proceeding
Case No. 09-01198 (ALG)**

- against -

**ANADARKO PETROLEUM CORPORATION,
et al.,**

Defendants.

THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

- against -

TRONOX, INC., *et al.*,

Defendants.

**STATEMENT IN SUPPORT OF LITIGATION TRUST'S MOTION
FOR PARTIAL SUMMARY JUDGMENT AND
UNITED STATES' JOINDER IN MOTION**

The undersigned States and other non-federal governmental and sovereign entities (the “Governmental Entities”) submit this statement to underscore their strong support of the Anadarko Litigation Trust’s (“Litigation Trust’s”) Motion for Partial Summary Judgment,¹ which asks the Court to reject a purported cap on damages advocated by the Anadarko defendants (“Anadarko”) in this adversary proceeding. The undersigned Governmental Entities are all signatories to the Environmental Settlement Agreement (“Settlement Agreement”),² and are parties that may benefit from the Litigation Trust’s recovery in the fraudulent conveyance action. The imposition of a cap on the Litigation Trust’s recovery would adversely impact the Governmental Entities, and would deprive them of the benefits they negotiated and expect under both the Settlement Agreement and the Debtors’ Plan of Reorganization.³

As described in the Litigation Trust’s Motion and in the United States’ Joinder,⁴ neither the Settlement Agreement nor the Plan imposes - and neither was intended to impose - a cap on the fraudulent conveyance action recovery against Anadarko. To the contrary, when executing the Settlement Agreement, the Governmental Entities understood that 88 percent of the *entire* uncapped recovery in that litigation would be paid to or for the benefit of the environmental governmental creditors. Indeed, the litigation recovery cap proposed by Anadarko would be inconsistent with the Settlement Agreement, which clearly contemplates the transfer of *any*

¹ *Plaintiff’s Motion for Partial Summary Judgment Regarding Plaintiff’s Recovery Under Section 550(a) of the Bankruptcy Code*, dated August 31, 2011 (Docket No. 257) (the “Motion”).

² Settlement Agreement, , Ex. 1, as amended (Docket No. 2692).

³ Plan, Ex. A (Docket No. 2567),.

⁴ *Joinder of the United States of America in the Litigation Trust’s Motion for Partial Summary Judgment Regarding the Litigation Trust’s Recovery Under Section 550(a) of the Bankruptcy Code*, dated Aug. 31, 2011 (Docket No. 259) (the “Joinder”).

litigation recovery to the Litigation Trust, in agreed proportions⁵ and with no cap, to address the many environmental sites covered under the Settlement Agreement. *See* Settlement Agreement ¶¶ 119 and 124-126(a)-(d). Indeed, paragraph 119 of the Settlement Agreement expressly states that the Debtors will establish a trust and “transfer *all* of their right, title and interest in the Anadarko litigation to the Anadarko Litigation Trust” (emphasis added). There simply is no cap or other limitation that can be read into this language.

In addition, as described in the Litigation Trust’s Motion (pp. 6-13), applicable law provides that no damages cap should be imposed on the fraudulent conveyance recovery in this case. *See* 11 U.S.C § 550(a); *see also In re Acequia, Inc.*, 34 F.3d 800, 811 (9th Cir. 1994). And as further detailed in the Litigation Trust’s Motion (pp. 13-16), the Debtors’ transfer to the Litigation Trust of their full and complete rights against Anadarko was made as part of the global settlement with the Governmental Entities, and is exactly the kind of “benefit to the estate” that justifies the Litigation Trust’s full, complete and uncapped recovery under Section 550(a) of the Code. There is nothing unfair about this result. Indeed, to allow the Litigation Trust’s recovery to be capped would unfairly benefit Anadarko.

Among other things, the experience of the Governmental Entities is that even the best estimates of environmental clean-up costs routinely prove to be too low, and actual costs regularly exceed estimated costs. An uncapped recovery is especially appropriate in this case because it would restore financial resources that Tronox would have had but for the fraud, and would protect the Governmental Entities in the likely event that future environmental clean-up costs ultimately exceed estimates. An uncapped recovery is one of the benefits that the Governmental Entities negotiated and obtained under the Settlement Agreement and Plan. This

⁵ The Settlement Agreement provides for 88% of the successful litigation proceeds to be distributed to the environmental sites covered under the Agreement.

benefit, in the case of a successful result, offsets the risk the Governmental Entities bear if the litigation outcome is not successful.

In the bankruptcy case, the Governmental Entities gave up valuable rights against the Debtor, and cooperated in the estate's divestiture of title to contaminated property in exchange for a share of *all* the rights the estate had against Anadarko. Attempting to now limit their recovery from the proceeds of the fraudulent conveyance action denies the Governmental Entities the benefit of the bargain which they struck with the Debtors, unjustly enriches Anadarko, and attempts to redefine the agreements upon which the entire Plan - and its support by the Governmental Entities - was founded.

Accordingly, for the reasons stated herein, in the Litigation Trust's Motion, and in the United States' Joinder, the undersigned Governmental Entities urge the Court to reject Anadarko's contention that the Trust's recovery in this adversary proceeding should be capped and to grant the Litigation Trust's Motion.

Dated: September 22, 2011
Albany, New York

Respectfully submitted,

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I, Maureen F. Leary, hereby certify that on the 22nd day of September, 2011 I served a copy of the Statement in Support upon each of the parties by electronic and/or first class mail, postage prepaid:

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